

# ARKANSAS SUPREME COURT

No. CR 06-621

NOT DESIGNATED FOR PUBLICATION

DONALD VERN SAUL  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      October 5, 2006

*PRO SE* MOTION FOR EXTENSION  
OF TIME [CIRCUIT COURT OF  
BENTON COUNTY, CR 2002-290,  
HON. DAVID S. CLINGER, JUDGE]

APPEAL DISMISSED; MOTION MOOT

---

---

## PER CURIAM

A jury found appellant Donald Vern Saul guilty of manufacture of a controlled substance, methamphetamine, and sentenced him to 360 months' imprisonment in the Arkansas Department of Correction. This court affirmed the judgment, reversing a decision by the Arkansas Court of Appeals. *Saul v. State*, 365 Ark. 77, \_\_\_ S.W.3d \_\_\_ (2006) (*rev'g Saul v. State*, 92 Ark. App. 49, \_\_\_ S.W.3d \_\_\_ (2005)). Appellant timely filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied by the trial court. Appellant, who has lodged an appeal of that order in this court and is proceeding *pro se*, filed the instant motion seeking an extension of thirty days' time to file appellant's brief.

It is clear on the record before us that appellant cannot prevail on appeal. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per*

*curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*).

Appellant's petition asserted four grounds for relief under Rule 37.1. Appellant alleged that his trial counsel was ineffective because her caseload was heavy and she had no experience with trials concerning methamphetamine charges. Appellant also alleged constitutional violations of his right to a fair and impartial trial, based upon allowance of testimony by two police officers concerning prior charges, and denial of due process in that no methamphetamine was introduced as evidence. None of these allegations present grounds for relief under the rule.

This court has held that even constitutional issues must be raised at trial or on direct appeal, rather than in postconviction relief proceedings. *Williams v. State*, 346 Ark 54, 56 S.W.3d 360 (2001). We have made an exception to the rule in those cases where the errors are so fundamental as to render the judgment of conviction void and subject to collateral attack. *Sasser v. State*, 338 Ark. 375, 993 S.W.2d 901 (1999) (*per curiam*). *See also Kemp v. State*, 330 Ark. 757, 956 S.W.2d 860 (1997) (*per curiam*). Admission of evidence and sufficiency of the evidence claims such as these are not such fundamental error. It is clear that the issues appellant here raises as constitutional claims could have been raised below. In fact, those issues were raised and discussed at length in our opinion on direct appeal.

The law-of-the-case doctrine dictates that a decision made in a prior appeal may not be revisited in a subsequent appeal. *Green v. State*, 343 Ark. 244, 33 S.W.3d 485 (2000). A decision in a prior case becomes law of the case, even if wrongly decided, and matters decided in the first appeal are considered concluded. *Id.* at 250, 33 S.W.3d at 489. The trial court was bound by our

previous decision on those issues, even were the claims cognizable in a Rule 37.1 proceeding.

As to appellant's claim of ineffective assistance of counsel, he failed in his petition to allege error as required for such a claim. Under the criteria for assessing the effectiveness of counsel as set out in *Strickland v. Washington*, 466 U.S. 668 (1984), when a convicted defendant complains of ineffective assistance of counsel, he must show first that counsel's performance was deficient through a showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the petitioner by the Sixth Amendment. Additionally, the petitioner must show that the deficient performance prejudiced the defense, which requires a showing that counsel's errors were so serious as to deprive the petitioner of a fair trial. *Andrews v. State*, 344 Ark. 606, 42 S.W.3d 484 (2001) (*per curiam*).

Appellant made no showing of errors by counsel. While he asserted that counsel was inexperienced and carried a heavy caseload, he did not allege any specific errors on the part of counsel that occurred as a result of those alleged circumstances. As appellant did not state grounds in his petition on which the trial court could have granted relief under Rule 37.1, he cannot prevail on appeal. The appeal is accordingly dismissed and the motion moot.

Appeal dismissed; motion moot.